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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,491	07/06/2006	Bernd Lang	4750-45	9424
23117 7590 02/05/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
BLIZZARD, CHRISTOPHER JAMES				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,491

Applicant(s)

LANG ET AL.

Examiner

CHRISTOPHER BLIZZARD

Art Unit

4185

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/06/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/05/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 11/10/2008 5/05/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 37, 38, 40, 41, 43, 44, 50, 51, and 59-63** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 recites the limitation "the sound absorption path" "the first portion" and the "second portion". There is insufficient antecedent basis for these limitations in the claim.

Claim 38 recites the limitation "the sound absorption part". There is insufficient antecedent basis for this limitation in the claim.

Claim 40 recites the limitation "the support structures". There is insufficient antecedent basis for this limitation in the claim.

Claim 41 recites the limitation "the support structure". There is insufficient antecedent basis for this limitation in the claim.

Claim 43 recites the limitation "the receiving portion". There is insufficient antecedent basis for this limitation in the claim.

Claim 44 recites the limitation "the first portion of the molded part" and "the second portion of the molded part". There is insufficient antecedent basis for these limitations in the claim.

Claim 50 recites the limitation "the sound absorption path". There is insufficient antecedent basis for this limitation in the claim.

Claim 51 recites the limitation "the sound absorption path". There is insufficient antecedent basis for this limitation in the claim.

Claim 59 recites the limitation "the further function components". There is insufficient antecedent basis for this limitation in the claim.

Claim 60 recites the limitation "the further function components". There is insufficient antecedent basis for this limitation in the claim.

Claim 61 recites the limitation "the further function components". There is insufficient antecedent basis for this limitation in the claim.

Claim 62 recites the limitation "the further function components". There is insufficient antecedent basis for this limitation in the claim.

Claim 63 recites the limitation "the further function components". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 33-40, 42, 43, 45-58 and 61** are rejected under 35 U.S.C. 102(b) as being anticipated by **Kenyon (US 6,216,691)**.

Regarding claim 33, Kenyon et al. disclose a device for supplying a respiratory gas, in particular a CPAP device, having a delivery device (13) for delivering the respiratory gas at a pressure level that is above the ambient pressure, a housing device (18), for receiving the delivery device, and an air-conduction structure (20) for conducting the respiratory gas from the delivery device to an outlet region, wherein the air-conduction structure is embodied as a molded foam part made from a foamed material (column 2, lines 38-44, lines 53-56). Feminine

Regarding claim 34, Kenyon et al. discloses a device characterized in that the molded foam part defines air-carrying conduits (91) (fig. 10).

Regarding claim 35, Kenyon et al. discloses a device characterized in that the molded foam part is subdivided into a first portion (93) of the molded part and a second portion (94) of the molded part (column 6, lines 6-10) (fig. 10).

Regarding claim 36, Kenyon et al. discloses a device characterized in that the air-conduction structure is embodied such that it forms a sound absorption path (column 3, lines 25-27).

Regarding claim 37, Kenyon et al. discloses a device characterized in that a sound absorption path is formed upon the cooperation of a first portion (93) of the molded part with a second portion (94) of the molded part (column 6, lines 6-10) (fig. 10).

Regarding claim 38, Kenyon et al. discloses a device characterized in that a sound absorption path (91) is formed in some portions by a first portion (93) of the

molded part and in some portions by a second portion (94) of the molded part (column 6, lines 6-10) (fig. 10).

Regarding claim 39, Kenyon et al. discloses a device characterized in that support structures are provided, for bracing the molded foam part (column 3, lines 46-48).

Regarding claim 40, Kenyon et al. discloses a device characterized in that the molded foam part is detachably coupled to the support structures (column 3, lines 35-36).

Regarding claim 42, Kenyon et al. discloses a device characterized in that the molded foam part defines a receiving portion (22), for elastically resiliently receiving the delivery device(13) (column 4, lines 45-47) (fig. 1).

Regarding claim 43, Kenyon et al. discloses a device characterized in that the receiving portion (22) is embodied such that the delivery device (13) is received in it without play, with a slight press fit (column 4, lines 45-49) (fig. 1).

Regarding claim 45, Kenyon et al. discloses a device characterized in that at least one of the portions of the molded part forms a filter device (column 5, lines 51-52).

Regarding claim 46, Kenyon et al. discloses a device characterized in that a filter device is coupled to the foam body (column 5, lines 51-52).

Regarding claim 47, Kenyon et al. discloses a device characterized in that the foam body forms a portion (72) to stand on (column 5, lines 30-33).

Regarding claim 48, Kenyon et al. discloses a device characterized in that the housing device forms a receiving jacket and is placed onto the foam body (column 5, lines 54-57).

Regarding claim 49, Kenyon et al. discloses a device characterized in that at least some of the air-conduction conduits (66) are formed by an outer surface region of the foam body (column 5, lines 25-31) (fig. 5).

Regarding claim 50, Kenyon et al. discloses a device characterized in that the sound absorption path (91) has a multiply winding course (column 6, lines 7-9) (fig. 10).

Regarding claim 51, Kenyon et al. discloses a device characterized in that the inner wall of the conduit (70), which surrounds the sound absorption path and is formed by the foam body or a coating provided on it, is provided with sound absorbing profile sections (column 6, lines 25-29) (fig. 11).

Regarding claim 52, Kenyon et al. discloses a CPAP device, including a core module (50) and an outer module provided for receiving the core module (column 5, lines 54-57), wherein the core module includes a foam body (column 5, line 13), and an air-conduction path (25) is embodied in the foam body and is in communication with a respiratory gas delivery device (14) (fig. 6), for furnishing a respiratory gas conduction portion with sound absorbing properties (column 2, lines 53-56).

Regarding claim 53, Kenyon et al. discloses a CPAP device characterized in that the respiratory gas delivery device (13) is embedded in the foam body (50) (column 4, lines 45-47).

Regarding claim 54, Kenyon et al. discloses a CPAP device characterized in that the foam body is embodied in multiple parts (column 3, lines 2-4).

Regarding claim 55, Kenyon et al. discloses a CPAP device characterized in that function components are inserted into the foam body (column 3, lines 44-46).

Regarding claim 56, Kenyon et al. discloses a CPAP device characterized in that conduction structure components (38) are inserted into the foam body (column 4, lines 61-64) (fig. 1).

Regarding claim 57, Kenyon et al. discloses a CPAP device characterized in that the conduction structure component is embodied as a breathing hose connection structure component (38) (column 4, lines 61-64) (fig. 1).

Regarding claim 58, Kenyon et al. discloses a CPAP device characterized in that the foam body (50) forms a securing device (column 4, lines 45-47) for suspending the delivery device (13) (column 5, lines 30-35) and/or other function components of the CPAP device.

Regarding claim 61, Kenyon et al. discloses a CPAP device characterized in that a further function components is a control unit (column 6, lines 60-62).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 41 and 64** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kenyon (US 6,216,691)**.

Regarding claims 41 and 64, it is noted that the device of Kenyon et al. appears to be substantially identical to the devices claimed, although produced by a different process; therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

5. **Claim 44, 59, 60, 62 and 63** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kenyon (US 6,216,691)** in view of **McCombs (US 7,156,903 B2)**.

Regarding claim 44, Kenyon et al. fails to disclose a device characterized in that the first portion of the molded part and the second portion of the molded part have different material properties.

However, McCombs discloses a device characterized in that the first portion of the molded part and the second portion of the molded part have different material properties (column 3, lines 22-30).

6. It would have been obvious to one of ordinary skill in the art to modify the invention of Kenyon et al. to include different material properties as taught by McCombs since doing so allows the device to provide more protection in specific areas.

Regarding claim 59, Kenyon et al. discloses a CPAP device but fails to disclose the device characterized in that a further function component is a power pack.

However, McCombs discloses a device characterized in that a further function component is a power pack, in the form of a battery (column 5, line 55) (fig. 4e)

7. It would have been obvious to one of ordinary skill in the art to modify the invention of Kenyon et al. to include a power pack as taught by McCombs since doing so would allow the device to be used without an external power supply.

Regarding claim 60, Kenyon et al. discloses a CPAP device but fails to disclose the device characterized in that a further function component is a sensor device for pressure and/or volumetric flow.

However, McCombs discloses a device characterized in that a further function component is a sensor device for pressure and/or volumetric flow (column 4, lines 60-62).

8. It would have been obvious to one of ordinary skill in the art to modify the invention of Kenyon et al. to include a sensor as taught by McCombs since doing so would allow the device to determine malfunctions.

Regarding claim 62, Kenyon et al. discloses a CPAP device but fails to disclose the device characterized in that a further function component is a valve device

However, McCombs discloses a device characterized in that a further function component is a valve device (column 4, lines 60-62).

9. It would have been obvious to one of ordinary skill in the art to modify the invention of Kenyon et al. to include a valve as taught by McCombs since doing so would allow the device to control flow through it.

Regarding claim 63, Kenyon et al. discloses a CPAP device but fails to disclose the device characterized in that a further function component is a switch device

However, McCombs discloses a device characterized in that a further function component is a switch device (30) (column 2, lines 47-48).

10. It would have been obvious to one of ordinary skill in the art to modify the invention of Kenyon et al. to include a switch device as taught by McCombs since doing so would allow the device to be controlled by an operator.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell Mckinnon can be reached on (571)2724797. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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1/30/09

/C. B./

Examiner, Art Unit 4185

/Terrell L Mckinnon/

Supervisory Patent Examiner, Art Unit 4185